

# Legislative Audit Division

State of Montana



Report to the Legislature

November 2004

## Financial-Compliance Audit For the Two Fiscal Years Ended June 30, 2004

### Judicial Branch

This report contains six recommendations for improvement in Judicial Branch operations. Recommendations addressed in the report include:

- ▶ Juvenile Delinquency Intervention Program
- ▶ Unrecorded Activity
- ▶ Inadequate Controls Over Cash Collections
- ▶ Compliance with State Laws

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## FINANCIAL-COMPLIANCE AUDITS

Financial-compliance audits are conducted by the Legislative Audit Division to determine if an agency's financial operations are properly conducted, the financial reports are presented fairly, and the agency has complied with applicable laws and regulations. In performing the audit work, the audit staff uses standards set forth by the American Institute of Certified Public Accountants and the United States Government Accountability Office. Financial-compliance audit staff members hold degrees with an emphasis in accounting. Most staff members hold Certified Public Accountant (CPA) certificates.

Government Auditing Standards, the Single Audit Act Amendments of 1996 and OMB Circular A-133 require the auditor to issue certain financial, internal control, and compliance reports. This individual agency audit report is not intended to comply with these reporting requirements and is therefore not intended for distribution to federal grantor agencies. The Legislative Audit Division issues a statewide biennial Single Audit Report which complies with the above reporting requirements. The Single Audit Report for the two fiscal years ended June 30, 2005, will be issued by March 31, 2006. The Single Audit Report for the two fiscal years ended June 30, 2003, was issued on March 23, 2004. Copies of the Single Audit Report can be obtained by contacting:

Single Audit Coordinator  
Office of Budget and Program Planning  
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# LEGISLATIVE AUDIT DIVISION

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November 2004

The Legislative Audit Committee  
of the Montana State Legislature:

This is our financial-compliance audit report on the Judicial Branch (Branch) for the two fiscal years ending June 30, 2004. Included in this report are six recommendations to the Branch concerning the Juvenile Delinquency Intervention Program, district court issues, and compliance with state laws. The Branch's written response to the audit recommendations is included in the back of the audit report.

We thank the Chief Justice and the Branch personnel for their cooperation and assistance throughout the audit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott A. Seacat", with a long horizontal flourish extending to the right.

Scott A. Seacat  
Legislative Auditor



# **Legislative Audit Division**

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**Financial-Compliance Audit**

**For the Two Fiscal Years Ended June 30, 2004**

## **Judicial Branch**

Members of the audit staff involved in this audit were Laurie H. Evans, John Fine, and Laura L. Norris.

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## Elected and Appointed Officials

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### Supreme Court

		Term <u>Expires</u>
	Karla Gray	Chief Justice 2008
	William Leaphart	Justice 2010
	James C. Nelson	Justice 2004
	Jim Regnier	Justice 2004
	John Warner	Justice 2004
	Patricia Cotter	Justice 2008
	Jim Rice	Justice 2006

### Clerk of Supreme Court

Ed Smith 2006

### Appointed Officials

Jim Oppedahl Court Administrator  
Judith Meadows State Law Librarian

For additional information concerning the Judicial Branch programs contact:

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Montana Supreme Court  
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**Judicial Branch**

We performed a financial-compliance audit of the Judicial Branch (Branch) for the two fiscal years ended June 30, 2004. The Branch implemented five and partially implemented two of the seven prior audit recommendations.

This report contains six recommendations where the Branch could improve accounting and enhance compliance with state policies and laws.

We issued a qualified opinion on the financial schedules contained in this report. The opinion on page A-3 discusses Juvenile Delinquency Intervention Program misstatements in the General Fund.

The listing below serves as a means of summarizing the recommendations contained in the report, the Branch's response thereto, and a reference to the supporting comments.

Recommendation #1

We recommend that the Judicial Branch:

- A. Work with the Department of Corrections to ensure that the Juvenile Delinquency Intervention Program surplus distributions are given to the Branch instead of counties.
- B. Seek appropriation authority to spend the surplus Juvenile Delinquency Intervention Program funds it receives from the Department of Corrections..... 6

Branch Response: Concur. See page B-3.

Recommendation #2

We recommend the Judicial Branch:

- A. Establish procedures for the proper deposit and accounting for funds received by the youth courts.
- B. Provide guidance to youth courts to ensure deposits are timely in accordance with state law.

## Report Summary

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- C. Implement adequate control over cash collections at the youth courts. .... 11

Branch Response: Concur. See page B-4.

### Recommendation #3

We recommend the Judicial Branch:

- A. Provide guidance to the municipal, justice, and district clerks of courts on how to report tech surcharge fees in accordance with state law.
- B. Reimburse the Department of Justice \$45,640 for the Montana Law Enforcement Academy surcharges allowed under section 3-1-318, MCA.
- C. Reimburse Missoula County \$71,632 for the county attorney fees and the county Victim/Witness Advocacy fees allowed under section 46-18-236, MCA.
- D. Comply with sections 3-5-604(2) and 3-5-601(4), MCA, or seek legislation to amend those sections to require court reporters to remit transcription fees directly to the Court Administrator's office..... 13

Branch Response: Partially Concur. See page B-5.

### Recommendation #4

We recommend the Judicial Branch process county public defender reimbursement payments within 30 days as required by state law. .... 14

Branch Response: Concur. See page B-7.

### Recommendation #5

We recommend the Judicial Branch comply with state law regarding timely filing and payment for district court judges' travel claims. .... 15

Branch Response: Concur. See page B-8.

### Recommendation #6

We recommend the Supreme Court amend its order with regard to the Board of Bar Examiners travel costs. .... 15

Branch Response: Concur. See page B-8.

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## Introduction

We performed a financial-compliance audit of the Judicial Branch (Branch) for the two fiscal years ended June 30, 2004. The audit objectives were to:

1. Determine the Branch's compliance with applicable laws and regulations.
2. Make recommendations for improvements in the Branch's management and internal controls.
3. Determine the implementation status of prior audit recommendations.
4. Determine whether the financial schedules present fairly the results of operations of the Branch for the two fiscal years ended June 30, 2004.

This report contains six recommendations to the Branch. These recommendations address Juvenile Delinquency Intervention Program, district court issues, and compliance with state laws. Other areas of concern not having a significant effect on the successful operations of the Branch are not included in this report, but have been discussed with management. In accordance with section 5-13-307, MCA, we analyzed and disclosed the costs, if significant, of implementing the recommendations made in this report.

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## Background

The Constitution of the state of Montana vests the judicial power of the state in a Supreme Court, district courts, justice courts, and such other courts as may be provided by law. The Supreme Court, which consists of a Chief Justice and six associate justices, has appellate jurisdiction and limited original jurisdiction. The Chief Justice is the head of the Supreme Court. The Court Administrator, appointed by the Supreme Court, serves as its administrative officer. The Supreme Court appoints the Law Librarian. The librarian develops and maintains the law library collection and administers library services. The Supreme Court has general supervisory control over all other courts and may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar, and conduct of practicing attorneys. The rules of procedure are subject

## Introduction

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to disapproval by the legislature in either of the two sessions following promulgation.

Supreme Court justices and district court judges are elected to office in nonpartisan elections and serve eight-year and six-year terms, respectively. Terms of office and the procedure for filling vacancies in the courts are established in the Constitution and by statute. The legislature establishes judicial districts and provides for the number of judges in each district. Currently, there are 42 district court judges in 22 judicial districts.

The Clerk of the Supreme Court is elected to a six-year term on a partisan ballot in a statewide election. In accordance with section 3-2-402, MCA, the clerk keeps the Supreme Court's records and files, performs functions relating to issuing writs and certificates, approves bonds, files all papers and transcripts, and performs other duties as required by the Supreme Court.

For fiscal management purposes, the Branch is divided into six programs with a total authorized full-time equivalent (FTE) staff level of 375.5 for fiscal year 2003-04. A description of each program follows:

1. The Supreme Court Operations program accounts for the costs of operation of the Supreme Court, which includes special projects related to foster care, district court processes, and court automation (52 FTE).
2. The Boards and Commissions program accounts for expenditures for the boards and commissions established either by the Constitution, statute, or the Supreme Court. These boards and commissions handle areas such as judicial discipline, rules, admission to the bar, and other activities to improve and monitor the administration of justice (3 FTE).
3. The Law Library program accounts for the operation of the State Law Library. The Branch maintains the library for use by the Supreme Court, the legislature, state officers and employees, members of the bar, and the general public (8 FTE).

4. The District Court Operations program accounts for the payment of salaries, travel, training expenses, and operating costs for district court judges, their staff, and youth probation officers. It also includes certain adult criminal, child abuse, and child neglect case expenses. The 2001 Legislature made the Branch financially responsible for the district courts and their expenses, effective July 1, 2002 (296 FTE).
5. The Water Courts Supervision program accounts for expenditures of the water courts. Montana's Water Courts were created to adjudicate claims of existing water rights in Montana and supervise the distribution of water within the four water divisions of the state (11 FTE).
6. The Clerk of Court program accounts for the costs of operation of the Clerk of the Supreme Court (5.5 FTE).

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### Attached Agencies

The Montana Medical Legal Panel and the Montana Chiropractic Legal Panel are attached to the Supreme Court for administrative purposes only and audited separately. The Montana Chiropractic Legal Panel's audit for the two fiscal years ended June 30, 2004, will be issued in November 2004. The Montana Medical Legal Panel's audit for the two fiscal years ended December 31, 2003, was issued in June 2004.

The panels review malpractice claims made against medical or chiropractic physicians and health care providers. The panels must hear and make a decision on a claim before the claim can be filed in court. The panels determine if there is substantial evidence the stated act or omission occurred, whether the act or omission constitutes malpractice, and if there is reasonable medical probability of injury because of the act or omission.

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### Prior Audit Recommendations

Our prior audit report for the two fiscal years ended June 30, 2002, contained seven recommendations. The Branch has implemented five recommendations and partially implemented two recommendations. The partially implemented recommendations concern timely payments to counties, discussed on page 13, and recording all the Branch's activity on the accounting records discussed in recommendations 1 and 2 on pages 5 through 11.



# Findings and Recommendations

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## Juvenile Delinquency Intervention Program (JDIP)

**The Judicial Branch (Branch) does not have appropriation authority to spend the JDIP moneys it receives.**

The JDIP is a General Fund program that provides an alternative method of funding juvenile placements and services. Each youth court receives an allotment of JDIP funds, which is tracked and recorded at the Department of Corrections (DOC). Any funds left over at the end of the year is to be distributed to the youth courts to be used by them for developing early intervention and placement alternatives in the youth courts as allowed by section 41-5-2003, MCA.

Prior to the legislature requiring the Branch to assume the district courts' expenses, the local governments were responsible for the youth courts, received the surplus JDIP funds from the DOC, and spent the JDIP moneys using local government appropriations. Since the district court assumption in 2002-03, the Branch is responsible for the youth courts and its activities. The DOC should provide the surplus funding to the Branch for disbursement to the youth courts.

In October of fiscal years 2003-04 and 2002-03, the DOC distributed surplus JDIP placement funds totaling \$673,248 and \$897,702, respectively, to the counties in which the youth courts resided. The counties then spent the funds on behalf of the youth courts for early intervention and placement alternatives allowed by state law. The Branch did not record this revenue or expenditure activity on its accounting records in fiscal years 2003-04 or 2002-03.

According to Article VIII, Section 14, of the Montana Constitution no money may be paid out of the state treasury unless there is an appropriation made by law. In fiscal years 2002-03, 2003-04, and 2004-05, the entire annual general

## Findings and Recommendations

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fund JDIP appropriation authority was provided to the DOC. The Branch did not have any appropriation to spend the JDIP surplus funds received in fiscal years 2002-03, and 2003-04, and it does not have appropriation authority to spend the estimated \$959,312 of JDIP surplus it will receive in fiscal year 2004-05. As a result, the Branch is unable to apply JDIP surplus distributions to early intervention and placement alternatives allowed in State law until the legislature appropriates authority to the Branch to spend the JDIP surplus moneys.

### **Recommendation #1**

**We recommend that the Judicial Branch:**

- A. Work with the Department of Corrections to ensure that the Juvenile Delinquency Intervention Program surplus distributions are given to the Branch instead of counties.**
- B. Seek appropriation authority to spend the surplus Juvenile Delinquency Intervention Program funds it receives from the Department of Corrections.**

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### **District Court Issues**

The Branch has financial and management responsibilities for 22 district courts throughout the state of Montana. District courts have original jurisdiction in felony criminal cases, civil and probate matters, law and equity cases, and other cases or proceedings not assigned specifically to other courts. Youth courts, which deal with youth on probation, are also part of the district courts.

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### **Expenditure, Revenue and Cash Transactions**

**The Branch failed to record youth courts' restitution and youth courts' revenues and expenditures which were made at the county level, to ensure youth courts deposit cash receipts as required by state law, and to institute internal control over cash receipting and disbursing functions.**

In 2001, the legislature enacted legislation requiring the Branch to assume the costs and the administrative responsibility for the district courts. As a result of assumption of these functions by the state,

financial transactions of the district courts became state financial activity and subject to Branch administrative control. Prior to the July 1, 2002, effective date, district courts' financial activity had been administered by counties. The following four sections discuss situations where Branch compliance and control related to disbursement and receipt activity can be improved.

### **Youth Court Restitution**

Youth courts may require restitution from youth who victimize individuals or their property. The offenders pay the restitution directly to the youth courts, which then distribute the funds to the victims. The youth courts handle the activity in a variety of ways. Some youth courts receive offender checks or money orders payable directly to the victim, which the youth court then gives to the victim. Other courts receive the restitution payment, deposit the funds in a non-treasury bank account, then pay the victim by a check drawn on the account. Finally, some youth courts have the offenders pay the county in which the court is located and the county pays the victim. Restitution activity, which is properly part of the district courts' financial activity, is not recorded on the state's accounting system for 20 of 22 judicial districts.

Although the restitution does not ultimately belong to the Branch, the youth courts assess, collect, and remit the restitution to the victims and have a fiduciary responsibility to properly account for and control the moneys collected. Any restitution held by the youth courts is property held in trust for the victims. Table 1 shows the understatement of property held in trust balances and activity related to restitution received and disbursed for the two fiscal years ended June 30, 2003 and 2004.

## Findings and Recommendations

**Table 1**  
**Youth Courts Restitution**

	Fiscal Year 2003 Understatement	Fiscal Year 2004 Understatement
Beginning Balance of Property Held in Trust on July 1	\$ 152,806	\$ 164,562
Additions to Property Held in Trust	280,401	271,346
Reductions in Property Held in Trust	268,645	281,809
Ending Balance of Property Held in Trust on June 30	164,562	154,099

**Source: Compiled by the Legislative Audit Division from Judicial Branch records.**

Section 17-6-105(2), MCA, requires the Branch to deposit receipts in the state treasury or in banks designated by the Department of Administration. At June 30, 2004, district courts had 11 checking accounts not approved by the department.

Branch personnel stated they are in the process of developing policies and procedures for youth courts' restitution. Branch officials indicated that recording restitution activity on the state's accounting records and obtaining authorization for all checking accounts with the Department of Administration has been a lower priority than organizing and recording the majority of the district court assumption activity on the state's accounting records.

### Youth Court Revenue and Expenditure Activity Recorded by Counties

Sections 41-5-1304 and 41-5-1512, MCA, allow youth courts to charge fees to recover from youth the cost of their supervision and care. During our audit period, one youth court collected fees from youths that it served. During the first ten months of fiscal year 2003-04, the youth court collected these fees and deposited them with the county treasurer. During those 10 months, the county disbursed \$16,367 on behalf of the youth court. In April 2004, the Court Administrator's office realized the youth court was depositing

## Findings and Recommendations

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the money with the county. In May, the county sent the Branch a check from youth court's account. As of July 2004, we found the county youth court fund still held \$1,725 in fees that belong to the Branch. The county kept this money because the youth court pledged it as matching funds for a federal grant for which the county applied.

During fiscal year 2002-03 and 2003-04, after the state assumed responsibility for youth courts, two counties spent \$2,822 and \$4,788 on behalf of the youth courts from federal grants received prior to state assumption of courts' costs.

In the above cases the money collected and spent by the counties on behalf of the youth courts was not reported to the Branch. Branch personnel in Helena were not aware of the funds the counties were spending, and Branch personnel in the outlying youth courts did not realize that funds the counties spent on behalf of their operations should be reported to the Court Administrator's office.

One youth court charges an administrative fee on restitution it collects. During fiscal year 2003-04, the youth court used \$8,180 of its fee money to purchase a copy machine for the youth court. Neither the revenues nor expenditures were recorded on the state's accounting records in fiscal year 2003-04. The Court Administrator's office was aware of this activity, but did not get it recorded by the end of the fiscal year.

### Timely Deposits

Three of the four youth courts we visited deposited their fee and restitution money once, twice or three times a month. The fourth deposited funds one to two times a week. Prior to depositing the money, the four youth courts lock it up. The four youth courts we visited collected fee and restitution moneys ranging from \$12,000 to \$90,000 a year.

Section 17-6-105(6), MCA, states that all money received by a state agency must be deposited when the accumulated amount of coin and currency exceeds \$100, total collections exceed \$500, or at least

## Findings and Recommendations

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weekly. Since the money is not being deposited at least weekly, there is a greater risk of theft or loss of state resources and resources for which the state is responsible.

Youth court personnel were not aware of the state law requiring them to deposit the money in a timely manner. Some said it was more convenient to make a deposit when they had larger amounts of money rather than depositing more frequently.

### Cash Controls

State policy requires each state agency establish and maintain a system of internal control over collections and deposits. An effective system of internal control will provide reasonable assurance the collections and deposits are properly performed. Sound control procedures, such as segregation of duties, separate job responsibilities that place a person in a position to perpetrate and conceal errors or irregularities in the normal course of their duties. An effective control system has an additional benefit of protecting honest employees from unwarranted suspicion of wrongdoing.

At one youth court, which receives approximately \$65,000 a year, one person makes cash deposits, reconciles the checkbook to the bank statement, and sometimes writes receipts for money as it is received. Although the youth court uses prenumbered receipts, there is no review process for the restitution receipted, deposited or reconciled. The lack of appropriate control over cash increases the risk that money could be lost or stolen.

Branch personnel at the youth courts stated that there are not many people in the youth courts, and they do not have the time to review the financial activity. However, finding one independent person in each district court to review the activity would add internal controls.

**Recommendation #2**

**We recommend the Judicial Branch:**

- A. Establish procedures for the proper deposit and accounting for funds received by the youth courts.**
- B. Provide guidance to youth courts to ensure deposits are timely in accordance with state law.**
- C. Implement adequate control over cash collections at the youth courts.**

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**County Collection Report**

**Courts did not adequately identify collections for remission to the state on the monthly county collection report as required by state law.**

Municipal, justice and district clerks of court collect various city, county, and state fees as part of their operations. State law directs the state fees be sent to the state for deposit in the state treasury. The clerks of court use the monthly county collection report process to transmit these funds to the state's Department of Revenue. We noted several situations where revenue was not properly reported on the collection reports.

Section 3-1-317, MCA, states that all courts of original jurisdiction shall impose a \$10 surcharge on all civil and criminal cases (tech surcharge). In fiscal year 2003-04, we noted that two courts in Missoula County and one court in Cascade County reported the following fees incorrectly as tech surcharge revenue.

## Findings and Recommendations

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**Table 2**

**Court Charges Allocated to Tech Surcharge Revenue**

Montana Law Enforcement Academy (MLEA) Surcharge (section 3-1-318, MCA)	\$45,640
Missoula County Victim Witness Advocacy Fees (section 46-18-236, MCA)	\$23,655
Missoula County Attorney's Fees	\$49,977

**Source: Compiled by the Legislative Audit Division from the Missoula County Treasurer's and the City of Cascade's Records**

The counties recorded all of these fees as tech surcharge revenue on the county collection reports. The County Treasurers' offices stated that the various fees were reported to them on the tech surcharge form, and it was not clear that the other fees and surcharges did not belong with the tech surcharge.

Sections 3-5-604(2) and 3-5-601(4), MCA, require court reporters who do not retain their transcription fees to remit them to the Clerk of District Court in the county where the judicial district resides. The clerk would forward the fees to the state on the county collection report for deposit in the General Fund.

The one court reporter, who does not retain the fees, sends the money to the Court Administrator's office in Helena rather than its Clerk of District Court. Branch personnel, who deposit the fees in the General Fund, said there is no line on the collection report for this activity, and they instructed the court reporter to send the fees directly to the Court Administrator's office in order to simplify the process. To continue this process, the Branch needs to seek legislation to change the law. Otherwise, the Branch needs to comply with the current statutes.

### Recommendation #3

**We recommend the Judicial Branch:**

- A. Provide guidance to the municipal, justice, and district clerks of courts on how to report tech surcharge fees in accordance with state law.**
- B. Reimburse the Department of Justice \$45,640 for the Montana Law Enforcement Academy surcharges allowed under section 3-1-318, MCA.**
- C. Reimburse Missoula County \$71,632 for the county attorney fees and the county Victim/Witness Advocacy fees allowed under section 46-18-236, MCA.**
- D. Comply with sections 3-5-604(2) and 3-5-601(4), MCA, or seek legislation to amend those sections to require court reporters to remit transcription fees directly to the Court Administrator's office.**

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### County Reimbursements

**The Branch did not pay counties within 30 days of receipt of a bill as required by state law.**

The Branch is responsible for paying for certain court appointed attorneys and public defenders. There are currently six judicial districts operating in counties that have county public defender offices. These employees are county employees, but the Branch is responsible for the public defender offices' costs associated with district court cases. These counties send monthly reimbursement claims to the Branch.

Section 3-5-901(3), MCA, requires the state to reimburse the counties within 30 days of the receipt of the claim. The county public defender offices had not been reimbursed for April, May, and June 2004 by the end of July 2004.

Branch personnel stated that they were working to get all of the costs associated with the district courts recorded on the state's accounting

## Findings and Recommendations

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records. During fiscal year 2003-04 the Branch caught up on all of the payments due to counties and court appointed attorneys. However, when the Branch experienced a temporary loss of staff, it was unable to process all its payments in the legally established time frame. Branch personnel stated they have just enough staff to process their payments timely, but when events such as staff turnover happen they are unable to process everything on a timely basis.

### **Recommendation #4**

**We recommend the Judicial Branch process county public defender reimbursement payments within 30 days as required by state law.**

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### **Timeliness of Judges' Submission of Travel Claims**

**The Branch approved judges' travel reimbursement claims when they were turned in past the statutory deadline.**

Section 3-5-215, MCA, states that a district court judge in a judicial district that includes more than one county who, for the purposes of holding court and disposing of judicial business, goes to a county of his judicial district other than the county in which he resides is entitled to his actual and necessary travel expenses in accordance with state travel laws. In accordance with section 3-5-216, MCA, the judge who wishes to avail himself of the provisions of section 3-5-215, MCA, shall on the first of each month or within three days thereafter, make out an itemized claim against the state showing the dates and details of the travel expenses for the previous month.

We tested the travel claims of six district court judges who reside in districts with more than one county within the district. We found five of these six judges had travel claims submitted and paid more than four days after the first of the month as required by section 3-5-216, MCA. The claim payments ranged from one day to seven months late.

Branch accounting personnel said they did not expect we would find 100 percent compliance with the above statute. They try to get the

## Findings and Recommendations

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judges to submit their travel claim within one month following the month of travel.

**Recommendation #5**

**We recommend the Judicial Branch comply with state law regarding timely filing and payment for district court judges' travel claims.**

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**Court Order Conflicts  
with State Statute**

**The Supreme Court ordered the Board of Bar Examiners to pay travel expenses at rates different than rates allowed by state law.**

Section 37-61-103, MCA, states the members of the Board of Bar Examiners are entitled to travel expenses for attending meetings of the board. The rates for the travel expenses are those set in sections 2-18-501, through 2-18-503, MCA. Through a court order, the Supreme Court ordered the Board of Bar Examiners to reimburse its board members for travel at rates different than those allowed by state law.

**Recommendation #6**

**We recommend the Supreme Court amend its order with regard to the Board of Bar Examiners travel costs.**



# **Independent Auditor's Report & Branch Financial Schedules**

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# LEGISLATIVE AUDIT DIVISION

Scott A. Seacat, Legislative Auditor  
John W. Northey, Legal Counsel



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Jim Pellegrini, Performance Audit  
Tori Hunthausen, IS Audit & Operations  
James Gillett, Financial-Compliance Audit

## INDEPENDENT AUDITOR'S REPORT

The Legislative Audit Committee  
of the Montana State Legislature:

We have audited the accompanying Schedules of Changes in Fund Balances & Property Held in Trust, Schedules of Total Revenues & Transfers-In, and Schedules of Total Expenditures & Transfers-Out of the Judicial Branch for each of the fiscal years ended June 30, 2004, and 2003. The information contained in these financial schedules is the responsibility of the Branch's management. Our responsibility is to express an opinion on these financial schedules based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial schedules are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial schedules. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in note 1, the financial schedules are presented on a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. The schedules are not intended to be a complete presentation and disclosure of the Branch's assets, liabilities and cash flows.

The Branch did not record the Juvenile Delinquency Intervention Program surplus revenue. Therefore Other Financing Sources, Total Revenues and Transfers-In and Budgeted Revenues in the General Fund, on the Schedules of Revenues and Transfers-In are understated by \$673,249 and \$897,701 for the periods ending June 30, 2004 and 2003 respectively.

In our opinion, except for the matters discussed in paragraph four, the financial schedules referred to above present fairly, in all material respects, the results of operations and changes in fund balances and property held in trust of the Branch for each of the fiscal years ended June 30, 2004, and 2003, in conformity with the basis of accounting described in note 1.

Respectfully submitted,

A handwritten signature in black ink that reads "James Gillett". The signature is fluid and cursive, written over a white background.

James Gillett, CPA  
Deputy Legislative Auditor

August 12, 2004



JUDICIAL BRANCH  
SCHEDULE OF CHANGES IN FUND BALANCES & PROPERTY HELD IN TRUST  
FOR THE FISCAL YEAR ENDED JUNE 30, 2004

	General Fund	State Special Revenue Fund	Federal Special Revenue Fund	Enterprise Fund	Agency Fund
FUND BALANCE: July 1, 2003	\$ (3,047,861)	\$ 205,996	\$ (1,721)	\$ 10,437	\$ 0
PROPERTY HELD IN TRUST: July 1, 2003					\$ 744
ADDITIONS					
Budgeted Revenues & Transfers-In	213,810	2,073,435	1,576,820	54,188	
NonBudgeted Revenues & Transfers-In	3,815	2,936			
Prior Year Revenues & Transfers-In Adjustments	(243)	15,811	4,661		
Direct Entries to Fund Balance	31,697,499	662,368			
Additions to Property Held in Trust					25,207
Total Additions	<u>31,914,881</u>	<u>2,754,550</u>	<u>1,581,481</u>	<u>54,188</u>	<u>25,207</u>
REDUCTIONS					
Budgeted Expenditures & Transfers-Out	32,054,819	2,403,890	1,574,906	56,438	
NonBudgeted Expenditures & Transfers-Out	4,760		7,800		
Prior Year Expenditures & Transfers-Out Adjustments	(368,592)	1,409	3,487		
Reductions in Property Held in Trust					20,700
Total Reductions	<u>31,690,987</u>	<u>2,405,299</u>	<u>1,586,193</u>	<u>56,438</u>	<u>20,700</u>
FUND BALANCE: June 30, 2004	<u>\$ (2,823,967)</u>	<u>\$ 555,247</u>	<u>\$ (6,433)</u>	<u>\$ 8,187</u>	<u>\$ 0</u>
PROPERTY HELD IN TRUST: June 30, 2004					<u>\$ 5,251</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-11.

JUDICIAL BRANCH  
SCHEDULE OF CHANGES IN FUND BALANCES & PROPERTY HELD IN TRUST  
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

	General Fund	State Special Revenue Fund	Federal Special Revenue Fund	Enterprise Fund	Agency Fund
FUND BALANCE: July 1, 2002	\$ (601,807)	\$ 87,709	\$ (109,175)	\$ (2,513)	\$ 0
PROPERTY HELD IN TRUST: July 1, 2002					0
<b>ADDITIONS</b>					
Budgeted Revenues & Transfers-In	231,345	992,179	1,263,714	45,090	
NonBudgeted Revenues & Transfers-In	2,460	23,846	58,407		
Prior Year Revenues & Transfers-In Adjustments	(4,095)	(34,902)	34,350		
Direct Entries to Fund Balance	25,737,128	273,846		13,251	
Additions to Property Held in Trust					28,496
Total Additions	<u>25,966,838</u>	<u>1,254,969</u>	<u>1,356,471</u>	<u>58,341</u>	<u>28,496</u>
<b>REDUCTIONS</b>					
Budgeted Expenditures & Transfers-Out	28,534,331	1,779,528	1,329,267	45,391	
Prior Year Expenditures & Transfers-Out Adjustments	(121,439)	(642,846)	(80,250)		
Reductions in Property Held in Trust					27,752
Total Reductions	<u>28,412,892</u>	<u>1,136,682</u>	<u>1,249,017</u>	<u>45,391</u>	<u>27,752</u>
FUND BALANCE: June 30, 2003	\$ (3,047,861)	\$ 205,996	\$ (1,721)	\$ 10,437	\$ 0
PROPERTY HELD IN TRUST: June 30, 2003					\$ 744

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-11.

**JUDICIAL BRANCH**  
**SCHEDULE OF TOTAL REVENUES & TRANSFERS-IN**  
**FOR THE FISCAL YEAR ENDED JUNE 30, 2004**

	General Fund	State Special Revenue Fund	Federal Special Revenue Fund	Enterprise Fund	Total
<b>TOTAL REVENUES &amp; TRANSFERS-IN BY CLASS</b>					
Licenses and Permits	\$ 97,750				\$ 97,750
Taxes	1,563	736			2,299
Charges for Services	96,705	1,603,028			1,699,733
Investment Earnings	2,252	598			2,850
Rentals, Leases and Royalties	19,112				19,112
Miscellaneous		487,820	\$ 14,971	\$ 54,188	556,979
Federal			1,566,510		1,566,510
<b>Total Revenues &amp; Transfers-In</b>	<b>217,382</b>	<b>2,092,182</b>	<b>1,581,481</b>	<b>54,188</b>	<b>3,945,233</b>
<b>Less: Nonbudgeted Revenues &amp; Transfers-In</b>	<b>3,815</b>	<b>2,936</b>			<b>6,751</b>
Prior Year Revenues & Transfers-In Adjustments	(243)	15,811	4,661		20,229
<b>Actual Budgeted Revenues &amp; Transfers-In</b>	<b>213,810</b>	<b>2,073,435</b>	<b>1,576,820</b>	<b>54,188</b>	<b>3,918,253</b>
<b>Estimated Revenues &amp; Transfers-In</b>	<b>243,000</b>	<b>2,959,565</b>	<b>1,640,965</b>	<b>50,000</b>	<b>4,893,530</b>
<b>Budgeted Revenues &amp; Transfers-In Over (Under) Estimated</b>	<b>\$ (29,190)</b>	<b>\$ (886,130)</b>	<b>\$ (64,145)</b>	<b>\$ 4,188</b>	<b>\$ (975,277)</b>
<b>BUDGETED REVENUES &amp; TRANSFERS-IN OVER (UNDER) ESTIMATED BY CLASS</b>					
Licenses and Permits	\$ (2,250)				\$ (2,250)
Charges for Services	(16,052)	\$ (428,744)			(444,796)
Investment Earnings		599			599
Rentals, Leases and Royalties	(10,888)				(10,888)
Miscellaneous		(457,985)	\$ (1)	\$ 4,188	(453,798)
Federal			(64,144)		(64,144)
<b>Budgeted Revenues &amp; Transfers-In Over (Under) Estimated</b>	<b>\$ (29,190)</b>	<b>\$ (886,130)</b>	<b>\$ (64,145)</b>	<b>\$ 4,188</b>	<b>\$ (975,277)</b>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-11.

JUDICIAL BRANCH  
 SCHEDULE OF TOTAL REVENUES & TRANSFERS-IN  
 FOR THE FISCAL YEAR ENDED JUNE 30, 2003

	General Fund	State Special Revenue Fund	Federal Special Revenue Fund	Enterprise Fund	Total
<b>TOTAL REVENUES &amp; TRANSFERS-IN BY CLASS</b>					
Licenses and Permits	\$ 96,650	\$ 239			\$ 96,889
Taxes	2,460				2,460
Charges for Services	89,667	949,404			1,039,071
Rentals, Leases and Royalties	40,933				40,933
Miscellaneous		31,480		\$ 45,090	76,570
Federal			\$ 1,356,471		1,356,471
Total Revenues & Transfers-In	<u>229,710</u>	<u>981,123</u>	<u>1,356,471</u>	<u>45,090</u>	<u>2,612,394</u>
Less: Nonbudgeted Revenues & Transfers-In	2,460	23,846	58,407		84,713
Prior Year Revenues & Transfers-In Adjustments	(4,095)	(34,902)	34,350		(4,647)
Actual Budgeted Revenues & Transfers-In	<u>231,345</u>	<u>992,179</u>	<u>1,263,714</u>	<u>45,090</u>	<u>2,532,328</u>
Estimated Revenues & Transfers-In	817,000	1,457,400	1,972,163	50,000	4,296,563
Budgeted Revenues & Transfers-In Over (Under) Estimated	<u>\$ (585,655)</u>	<u>\$ (465,221)</u>	<u>\$ (708,449)</u>	<u>\$ (4,910)</u>	<u>\$ (1,764,235)</u>
<b>BUDGETED REVENUES &amp; TRANSFERS-IN OVER (UNDER) ESTIMATED BY CLASS</b>					
Licenses and Permits	\$ (3,350)	\$ 501			\$ (2,849)
Charges for Services	(613,238)	(399,506)			(1,012,744)
Rentals, Leases and Royalties	30,933				30,933
Miscellaneous		(66,216)		\$ (4,910)	(71,126)
Federal			\$ (708,449)		(708,449)
Budgeted Revenues & Transfers-In Over (Under) Estimated	<u>\$ (585,655)</u>	<u>\$ (465,221)</u>	<u>\$ (708,449)</u>	<u>\$ (4,910)</u>	<u>\$ (1,764,235)</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-11.

JUDICIAL BRANCH  
 SCHEDULE OF TOTAL EXPENDITURES & TRANSFERS-OUT  
 FOR THE FISCAL YEAR ENDED JUNE 30, 2004

PROGRAM (ORG) EXPENDITURES & TRANSFERS-OUT	BOARDS AND COMMISSIONS	CLERK OF COURT	DISTRICT COURT OPERATIONS	LAW LIBRARY	SUPREME COURT OPERATIONS	WATER COURTS SUPERVISION	TOTAL
Personal Services							
Salaries	\$ 62,134	\$ 260,817	\$ 12,461,133	\$ 259,693	\$ 2,426,676	\$ 435,957	\$ 15,906,410
Other Compensation			5,000				5,000
Employee Benefits	17,408	74,340	4,113,562	74,148	745,604	132,482	5,157,544
Total	<u>79,542</u>	<u>335,157</u>	<u>16,579,695</u>	<u>333,841</u>	<u>3,172,280</u>	<u>568,439</u>	<u>21,068,954</u>
Operating Expenses							
Other Services	40,087	49,695	10,610,950	79,445	591,640	3,098	11,374,915
Supplies & Materials	16,390	2,260	178,395	18,730	144,119	21,902	381,796
Communications	11,434	13,805	256,629	10,001	245,388	26,816	564,073
Travel	43,135	4,236	420,030	4,406	149,492	5,583	626,882
Rent	6,615	4,891	35,404		413,042	39,281	499,233
Utilities					610		610
Repair & Maintenance	30	478	45,616	62,050	33,532	1,259	142,965
Other Expenses	19,383	6,366	110,290	13,085	40,125	6,564	195,813
Total	<u>137,074</u>	<u>81,731</u>	<u>11,657,314</u>	<u>187,717</u>	<u>1,617,948</u>	<u>104,503</u>	<u>13,786,287</u>
Equipment & Intangible Assets							
Equipment			30,563	306,097	11,957		348,617
Total			<u>30,563</u>	<u>306,097</u>	<u>11,957</u>		<u>348,617</u>
Grants							
From State Sources					535,059		535,059
Total					<u>535,059</u>		<u>535,059</u>
Total Expenditures & Transfers-Out	<u>\$ 216,616</u>	<u>\$ 416,888</u>	<u>\$ 28,267,572</u>	<u>\$ 827,655</u>	<u>\$ 5,337,244</u>	<u>\$ 672,942</u>	<u>\$ 35,738,917</u>
EXPENDITURES & TRANSFERS-OUT BY FUND							
General Fund	\$ 216,616	\$ 370,701	\$ 27,224,596	\$ 771,217	\$ 3,107,857		\$ 31,690,987
State Special Revenue Fund			198,613		1,533,744	\$ 672,942	2,405,299
Federal Special Revenue Fund		46,187	844,363		695,643		1,586,193
Enterprise Fund				56,438			56,438
Total Expenditures & Transfers-Out	<u>216,616</u>	<u>416,888</u>	<u>28,267,572</u>	<u>827,655</u>	<u>5,337,244</u>	<u>672,942</u>	<u>35,738,917</u>
Less: Nonbudgeted Expenditures & Transfers-Out					12,560		12,560
Prior Year Expenditures & Transfers-Out Adjustments	1,418	(7)	(370,329)	2,251	2,986	(16)	(363,697)
Actual Budgeted Expenditures & Transfers-Out	215,198	416,895	28,637,901	825,404	5,321,698	672,958	36,090,054
Budget Authority	255,999	417,343	46,611,121	832,068	6,359,898	726,820	55,203,249
Unspent Budget Authority	<u>\$ 40,801</u>	<u>\$ 448</u>	<u>\$ 17,973,220</u>	<u>\$ 6,664</u>	<u>\$ 1,038,200</u>	<u>\$ 53,862</u>	<u>\$ 19,113,195</u>
UNSPENT BUDGET AUTHORITY BY FUND							
General Fund	\$ 15,801	\$ 448	\$ 16,545,854	\$ 12	\$ 34,070		\$ 16,596,185
State Special Revenue Fund	25,000		721,109		477,353	\$ 53,862	1,277,324
Federal Special Revenue Fund			706,257		526,777		1,233,034
Enterprise Fund				6,652			6,652
Unspent Budget Authority	<u>\$ 40,801</u>	<u>\$ 448</u>	<u>\$ 17,973,220</u>	<u>\$ 6,664</u>	<u>\$ 1,038,200</u>	<u>\$ 53,862</u>	<u>\$ 19,113,195</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-11



JUDICIAL BRANCH  
 SCHEDULE OF TOTAL EXPENDITURES & TRANSFERS-OUT  
 FOR THE FISCAL YEAR ENDED JUNE 30, 2003

PROGRAM (ORG) EXPENDITURES & TRANSFERS-OUT	BOARDS AND COMMISSIONS	CLERK OF COURT	DISTRICT COURT OPERATIONS	LAW LIBRARY	SUPREME COURT OPERATIONS	WATER COURTS SUPERVISION	TOTAL
Personal Services							
Salaries	\$ 67,564	\$ 240,130	\$ 12,108,678	\$ 269,654	\$ 2,205,303	\$ 427,070	\$ 15,318,399
Employee Benefits	18,047	64,823	3,729,335	71,829	652,843	121,366	4,658,243
Total	<u>85,611</u>	<u>304,953</u>	<u>15,838,013</u>	<u>341,483</u>	<u>2,858,146</u>	<u>548,436</u>	<u>19,976,642</u>
Operating Expenses							
Other Services	46,933	12,332	7,419,601	64,300	447,800	731	7,991,697
Supplies & Materials	18,670	5,751	672,491	48,096	253,497	14,302	1,012,807
Communications	11,620	13,718	229,007	8,244	106,566	27,126	396,281
Travel	35,398	3,367	367,332	3,422	98,672	4,950	513,141
Rent	9,321	5,103	12,144	163	361,744	38,518	426,993
Repair & Maintenance		421	55,680	4,929	23,029	4,519	88,578
Other Expenses	3,191	5,759	53,715	13,887	94,683	4,942	176,177
Total	<u>125,133</u>	<u>46,451</u>	<u>8,809,970</u>	<u>143,041</u>	<u>1,385,991</u>	<u>95,088</u>	<u>10,605,674</u>
Equipment & Intangible Assets							
Equipment			36,292	302,077	69,100	9,930	417,399
Total			<u>36,292</u>	<u>302,077</u>	<u>69,100</u>	<u>9,930</u>	<u>417,399</u>
Grants							
From State Sources					(155,733)		(155,733)
Total					<u>(155,733)</u>		<u>(155,733)</u>
Total Expenditures & Transfers-Out	<u>\$ 210,744</u>	<u>\$ 351,404</u>	<u>\$ 24,684,275</u>	<u>\$ 786,601</u>	<u>\$ 4,157,504</u>	<u>\$ 653,454</u>	<u>\$ 30,843,982</u>
EXPENDITURES & TRANSFERS-OUT BY FUND							
General Fund	\$ 210,744	\$ 351,404	\$ 24,054,857	\$ 741,210	\$ 3,054,677		\$ 28,412,892
State Special Revenue Fund			38,418		444,810	\$ 653,454	1,136,682
Federal Special Revenue Fund			591,000		658,017		1,249,017
Enterprise Fund				45,391			45,391
Total Expenditures & Transfers-Out	<u>210,744</u>	<u>351,404</u>	<u>24,684,275</u>	<u>786,601</u>	<u>4,157,504</u>	<u>653,454</u>	<u>30,843,982</u>
Less: Prior Year Expenditures & Transfers-Out Adjustments			1,167	1,095	(847,008)	210	(844,536)
Actual Budgeted Expenditures & Transfers-Out	210,744	351,404	24,683,108	785,506	5,004,512	653,244	31,688,518
Budget Authority	212,167	397,858	25,314,743	794,842	5,890,470	698,072	33,308,152
Unspent Budget Authority	<u>\$ 1,423</u>	<u>\$ 46,454</u>	<u>\$ 631,635</u>	<u>\$ 9,336</u>	<u>\$ 885,958</u>	<u>\$ 44,828</u>	<u>\$ 1,619,634</u>
UNSPENT BUDGET AUTHORITY BY FUND							
General Fund	\$ 1,423	\$ 267	\$ 16,398	\$ 2,765	\$ 18,698		\$ 39,551
State Special Revenue Fund			61,582		21,581	\$ 44,828	127,991
Federal Special Revenue Fund		46,187	553,655		845,679		1,445,521
Enterprise Fund				6,571			6,571
Unspent Budget Authority	<u>\$ 1,423</u>	<u>\$ 46,454</u>	<u>\$ 631,635</u>	<u>\$ 9,336</u>	<u>\$ 885,958</u>	<u>\$ 44,828</u>	<u>\$ 1,619,634</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-11.



# Judicial Branch

## Notes to the Financial Schedules

### For the Two Fiscal Years Ended June 30, 2004

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#### 1. Summary of Significant Accounting Policies

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##### Basis of Accounting

The Judicial Branch (Branch) uses the modified accrual basis of accounting, as defined by state accounting policy, for its Governmental fund category. This category includes the General, State Special Revenue and Federal Special Revenue Funds. In applying the modified accrual basis, the Branch records:

- ▶ Revenues when the Branch receives cash or when receipts are measurable and available to pay current period liabilities.
- ▶ Expenditures for valid obligations when the Branch incurs the related liability and it is measurable, with the exception of the cost of employees' annual and sick leave. State accounting policy requires the Branch to record the cost of employees' annual leave and sick leave when used or paid.

The Branch uses accrual basis accounting for its Proprietary (Enterprise Fund) and Fiduciary (Agency Fund) categories. Under the accrual basis, as defined by state accounting policy, the Branch records revenues in the accounting period earned, when measurable, and records expenses in the period incurred, when measurable.

Expenditures and expenses may include: entire budgeted service contracts even though the Branch receives the services in a subsequent fiscal year; goods ordered with a purchase order before fiscal year-end, but not received as of fiscal year-end; and equipment ordered with a purchase order before fiscal year-end.

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##### Basis of Presentation

The financial schedule format is in accordance with the policy of the Legislative Audit Committee. The financial schedules are prepared from the transactions posted to the state's accounting system without adjustment.

## Notes to the Financial Schedules

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The Branch accounts are organized in funds according to the state fund structure established in section 17-2-102, MCA. The Branch uses the following funds:

### **Governmental Fund Category**

**General Fund** – to account for all financial resources except those required to be accounted for in another fund.

**State Special Revenue Fund** – to account for proceeds of specific revenue sources, other than private purpose trusts or major capital projects that are legally restricted to expenditures for specific purposes. The Branch's State Special Revenue Fund includes activity relating to Renewable Resource Grants, Court Automation, and Accrued County Sick and Vacation Leave Balances.

**Federal Special Revenue Fund** – to account for proceeds of federal revenue sources. The Federal Special Revenue Fund accounts for a variety of miscellaneous federal grants.

### **Proprietary Fund Category**

**Enterprise Fund** – to account for operations financed and operated in a manner similar to private business enterprises, where the legislature intends that the Branch finance or recover costs primarily through user charges. The Branch's Enterprise Fund accounts for the law library searches and research.

### **Fiduciary Fund Category**

**Agency Fund** – to account for resources held by the state in custodial capacity. The Branch's Agency Fund includes youth courts restitution.

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## 2. **General Fund Balance**

The negative fund balance in the General Fund does not indicate overspent appropriation authority. The Branch has authority to pay obligations from the statewide General Fund within its appropriation limits. The Branch expends cash or other assets from the statewide fund when it pays General Fund obligations. The Branch's outstanding liabilities exceed the assets it has placed in the fund, resulting in negative ending General Fund balances at June 30, 2004, and June 30, 2003.

**3. Expenditure Program**

The program designations in the Schedules of Total Expenditures & Transfers-Out are based on the organization designation used when the expenditures were recorded.

**4. Direct Entries to Fund Balance**

Direct entries to fund balance in the General, State Special Revenue, and Federal Special Revenue Funds include entries generated by the accounting system to reflect the flow of resources within individual funds shared by separate agencies.

**5. Grants Expenditures**

In Supreme Court Operation program, the amount of Grants – From State Sources on the fiscal year 2002-03 Schedule of Total Expenditures and Transfers-Out includes a prior year adjustment of \$595,850 for the cancellation of remaining balance of an expenditure accrual. The accrual was related to district court cost reimbursements to counties, which no longer occur since the administration of district courts has been assumed by the Branch.



# **Judicial Branch Response**

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THE SUPREME COURT OF MONTANA

JUSTICE BUILDING  
215 NORTH SANDERS  
PO BOX 203001  
HELENA, MONTANA 59620-3001  
TELEPHONE (406) 444-5490  
FAX (406) 444-3274

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OCT 22 2004

LEGISLATIVE AUDIT DIV.

October 22, 2004

Mr. Scott Seacat, Legislative Auditor  
Legislative Audit Division  
Room 135, State Capitol  
Helena, MT 59620

RE: Judicial Branch Audit for FY 2003 and FY 2004

Dear Mr. Seacat:

We have reviewed the financial-compliance audit of the Judicial Branch for the two fiscal years ended June 30, 2004. As you know, the legislatively-mandated assumption of district court expenses began in FY 2002 when the expenses of district court judicial staff and operating expenses were transferred to the Supreme Court and, then, significantly expanded again in FY 2004 when additional district court criminal, indigent defense and civil jury costs were transferred from counties to the Supreme Court. These major legislative changes have, to say the least, presented the Judicial Branch with significant challenges as we moved from a primarily county-funded system to one that is entirely state-funded!

During this transition period, the assistance of your Office in helping to identify areas where there may be accounting weakness or gaps has been very much appreciated. On behalf of the Judicial Branch, we want to express our appreciation to you and your staff for the professionalism with which the audit process was conducted.

The audit contains six recommendations for improvement in the Branch's operations, most of which result from the transition to state assumption of district court expenses. Your recommendations, and our responses and corrective actions are summarized below:

**Recommendation #1**

We recommend that the Judicial Branch:

- A. Work with the Department of Corrections to ensure that the Juvenile Delinquency Intervention Program surplus distributions are given to the Branch instead of counties.
- B. Seek appropriation authority to spend the surplus Juvenile Delinquency Intervention Program (JDIP) funds it receives from the Department of Corrections.

## **Response – We Concur**

- A. We agree that the JDIP surplus is appropriately a district court expense that should be reflected in state accounts. However, the original state assumption legislation did not address JDIP funds in any manner and, in the transition to state assumption, this was overlooked in both the budgeting and appropriation process. Therefore, the Judicial Branch has no general fund spending authority for the JDIP surplus funds for FY 2005.

In October, the Department of Corrections transferred without any discussion with the Judicial Branch approximately \$920,000 to the Judicial Branch of FY 2004 surplus JDIP funds. This transfer did not solve the underlying state-level accounting problem. The Judicial Branch is placed in a “Catch 22” position since the transfer of this funding does not (and indeed, could not) include spending authority in the Judicial Branch for FY 2005. This means that the Judicial Branch has the money but cannot spend it. This is a serious situation and creates potential public safety issues. Local juvenile prevention and intervention programs rely on JDIP surplus funding to provide prevention and intervention services to Montana youth. It goes without saying that many of these programs are essential to community safety and that the appropriation authority impasse that occurred as an unexpected consequence of state assumption is a serious matter. To put this in perspective, it should be noted that at least one Judicial District is currently scrambling to find ways to maintain outpatient treatment services for juvenile sex offenders who have been ordered to undergo treatment.

We are working with the Department of Corrections and the Office of Budget and Program Planning to explore ways to ensure that the FY 2005 JDIP surplus can be legally spent. In the narrow confines of the budget and accounting world, there do not appear, at this time, to be any easy solutions.

If no other viable option can be identified, the Branch will be forced to wait until the 2005 Legislative Session to seek spending authority for the FY 2005 JDIP surplus funds. If legislative action is the only way this problem can be solved, we will need to pursue emergency appropriation authority as soon as possible in the 2005 Legislative Session and would ask that the Legislative Audit Committee consider helping us to move a bill through the legislative process in an expeditious manner.

- B. The Branch has included approximately \$2 million of state special revenue spending authority in its FY 2006/ 2007 budget proposal for surplus JDIP funds.

## **Recommendation #2**

We recommend the Judicial Branch:

- A. Establish procedures for the proper deposit and accounting for funds received by the youth courts.
- B. Provide guidance to youth courts to ensure deposits are timely in accordance with state law.
- C. Implement adequate control over cash collections at the youth courts.

**Response – We concur**

- A. In June 2004, the Branch adopted revisions to Judicial Branch Policy 1270 to clarify accounting procedures for the collection of fees, fines and restitution. (See Attachment A) The policies cover the standard accounting practices required by Youth Courts related to fines, fees and restitution. The Office of the Court Administrator (OCA) staff has met twice with the Chief Probation Officers from the Judicial Districts to provide assistance and guidance on these policies. The OCA, with the assistance of the Department of Administration, is in the process of establishing state-approved checking accounts for the receipt and distribution of restitution payments. These funds will be collected and then deposited in local state-approved checking accounts. Juvenile Probation Officers and/or their staff will have authority to issue checks from these accounts to pay restitution to victims. These checking accounts will require two signatures.
- B. and C. In October 2004, the OCA distributed instructions and a listing of state treasury bank accounts for youth courts to use in order to properly deposit fines and fees. Juvenile Probation Officers and/or their staff will only be able to deposit money in these state accounts; they will not have checks to spend these funds. Staff in the Budget and Finance Division of the OCA will record revenues on the state accounting system (SABHRS). Juvenile Probation Officers will provide direction and supporting documentation to the OCA to issue state warrants from these funds to pay for allowable operating costs of the community service programs. The OCA is developing written procedures based on Policy 1270 to further specify the receipt, deposit and accounting required in this area to ensure timely deposit and accounting of funds collected in the youth courts. The OCA will continue to work with Chief Juvenile Probation Officers in each Judicial District to ensure that youth court staff understand and comply with state policy regarding receipts and deposits.

**Recommendation #3**

We recommend the Judicial Branch:

- A. Provide guidance to the municipal, justice, and district clerks of courts on how to report technology surcharge fees in accordance with state law.
- B. Reimburse the Department of Justice \$45,640 for the Montana Law Enforcement Academy surcharges allowed under section 3-1-318, MCA.
- C. Reimburse Missoula County \$71,632 for the county attorney fees and the county Victim/Witness Advocacy fees allowed under section 46-18-236, MCA.
- D. Comply with sections 3-5-604(2) and 3-5-601(4), MCA, or seek legislation to amend those sections to require court reporters to remit transcription fees directly to the Court Administrator's office.

**Response – We concur in part**

- A. It is important to note that justice and municipal court judges and clerks, clerks of the district court and county treasurers are local government officials who are not under the

supervision – or subject to the authority -- of the Judicial Branch. Our authority here is limited to providing technical assistance and information. We are not legally responsible for the administrative functions or audit of these offices. Nor does the Judicial Branch have the staff or the authority to conduct a statewide audit of county offices to determine whether errors may have occurred in the posting of various surcharges by county officials. We are concerned that the partial audits done by the Legislative Audit staff may not reflect the complete statewide picture of what may be owed by this Branch to other agencies, or what other agencies may owe the Judicial Branch. Only a statewide audit and reconciliation would settle this concern.

The OCA had numerous discussions with the Department of Revenue in the fall and winter of 2003/04 when it became evident that Court Automation Surcharge revenues would fall far below initial projections.

In May and June of 2004, the OCA staff spent several hundred hours researching and providing technical assistance to local courts and district court clerks to clarify appropriate, standard account codes and labels that would comply with the chart of accounts published by the Departments of Revenue and the Department of Administration. This effort was an attempt to help standardize how Court Automation Surcharges are reported to county treasurers from automated judicial case management systems maintained by the OCA.

Our findings, shared with the Department of Justice, were that most courts were reporting the surcharges on their disbursement reports using a general reference to the appropriate fund. Our conclusion was that the majority of reporting errors were “downstream” from the courts, e.g., at the level of the county treasurer or the Department of Revenue. As part of our efforts to analyze the unexpected drop in surcharge collections, we learned that the County Treasurers’ Collection Manual maintained by the Department of Administration’s Local Government Services Bureau had not been updated since the 1999 Legislative Session. Updates for the Manual for the 2001 and 2003 Legislative Session were sent to county treasurers in June 2004. (See Attachment B) This, too, may have contributed to errors in accounting at the local level.

The Justice Courts in Missoula do not presently use a case management system provided by the OCA. During our research we did, however, confirm with Missoula County technical support staff that the system the Missoula Justice courts use does, in fact, separate the Court Automation Surcharge from the MLEA Surcharge.

- B. The OCA identified for the Department of Justice that the amount MLEA received for their surcharge was solely submitted by the Missoula Municipal Court and that it was likely that MLEA funds from the Justice Courts had been deposited erroneously in the Court Automation Surcharge account. The OCA remitted the \$45,690 to the Department of Justice in September of 2004.
- C. The OCA has not completed its analysis of the Missoula County Attorney and Victim Witness fee accounting errors identified in the audit report. We will reimburse the

county if and when we have finally determined an amount owed.

- D. Only one court reporter has elected **not** to retain transcript fees. In accordance with statute, transcript fees collected by this court reporter must be deposited in the state general fund.

Two statutes apply in this situation. They are not consistent.

Section 31-5-601 (4), MCA, states:

4) (a) If a court reporter is appointed under subsection (2)(a), the state shall provide all equipment and supplies for the reporter's use. Any transcription fees paid for the reporter's transcription services **must be forwarded to the department of revenue for deposit in the state general fund.** (Emphasis added)

Section 3-5-604 (2), MCA, provides:

(2) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (1) must be paid **to the clerk of district court who shall forward the amount to the department of revenue** for deposit in the state general fund.

Section 31-5-601 (4), MCA does not specify the specific path that these transcript fees must take on their journey to the Department of Revenue, while section 3-5-604 (2) specifies the fees must be paid to the clerk of court.

When the issue of the transcript fees came to the attention of the OCA Budget and Finance Division, the staff checked with the Department of Revenue and discovered that the Department's County Collection Report did not contain a code for the receipt of "not-retained" transcription fees. Since there was only one court reporter to which this situation applied, the OCA advised that court reporter to send the money to the OCA and it was then deposited in the general fund. While this was a simple solution to a more convoluted process, it did not meet the requirements of either of the two statutes cited above. This error has been corrected. In a letter dated September 22, 2004, the OCA advised the court reporter who does not retain fees and the clerk of court of the requirements of section 3-5-604 (2) and that these transcript fees could not be sent to the OCA. (See Attachment C)

#### **Recommendation #4**

We recommend the Judicial Branch process county public defender reimbursement payments within 30 days as required by state law.

#### **Response – We Concur**

Since the previous audit, the Branch developed procedures to ensure that direct vendor payments are made within time limits set by state law. Currently, all direct vendor payments are made

within statutory time frames. The Branch did fall behind in making reimbursement payments to counties but currently is making reimbursement payments to counties within the time limits set by state law.

**Recommendation #5**

We recommend the Judicial Branch comply with state law regarding timely filing and payment for district court judges' travel claims.

**Response – We concur**

The Branch is developing procedures to ensure compliance with sections 3-5-215 and 3-5-216, MCA, and to communicate these procedures to all affected Judicial Branch personnel. A draft Travel Reimbursement Form has been developed to ensure that travel claimed under the provisions of section 3-5-215 are easily identified and submitted based on the requirements of statute. All District Court Judges have been notified of the requirements of sections 3-5-215 and 3-5-216, MCA, and that untimely travel submissions will not be paid by the OCA. (See Attachment D)

**Recommendation #6**

We recommend the Supreme Court amend its order with regard to the Board of Bar Examiners travel costs.

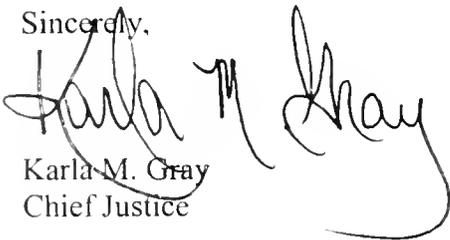
**Response – We concur**

The Supreme Court has issued a corrective Order. (See Attachment E)

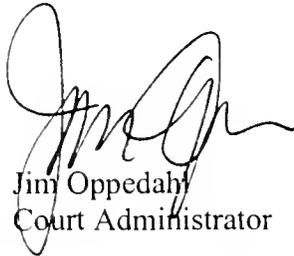
We want to express our appreciation, especially during these crucial transition years, for the work you and your staff have done in this particular audit and for the assistance of your Office in ensuring that the Judicial Branch is aware of weaknesses in accounting procedures. We assure you and the Legislative Audit Committee that we will do our very best to maintain proper accountability within the Branch.

We and other staff are available to answer any questions or provide any further information that you or the Legislative Audit Committee may require. Please do not hesitate to give us a call at 444-2621 if you need any additional material.

Sincerely,



Karla M. Gray  
Chief Justice



Jim Oppedahl  
Court Administrator

## Montana Judicial Branch Policies & Procedures

<b>Subject: Youth Court Fines, Fees and Restitution</b>	<b>Policy No.: 1270</b>
<b>Chapter: 41-5, et al, MCA</b>	<b>Pages: 3</b>
<b>Section: Youth</b>	<b>Revision Date: June 29, 2004</b>
	<b>Effective Date: June 29, 2004</b>

### 1.0 POLICY

The Montana Youth Court Act provides for cost recovery of services provided to youth and parents through the Youth Courts. The Judicial Branch also recognizes the needs of local Youth Courts to individually set fees, which recognize the economic and social realities of the community. This policy provides parameters for the collection, disbursement and waiver of fees and fines related to Youth Court services.

### 2.0 DEFINITIONS

"Fee for service" is a fee for providing a specific service such as drug tests, electronic monitoring or community service.

"Supervision fee" is a fee assessed by Youth Court to provide services to a youth under the jurisdiction of the Youth Court.

"Fine" is a penalty for an offense. Only a judge can assess a fine. A Youth Court probation officer cannot assess a fine.

"Restitution" is repayment to a victim as agreed to in a consent adjustment or as ordered in a consent decree or other court order.

### 3.0 PROCEDURE

X A. All money collected for fees, fines and restitution must be collected in compliance with state accounting and budgeting procedures. Fees, fines and restitution dollars must be collected and disbursed by the Youth Court office in compliance with standard accounting practices. In addition to standard accounting practices, each Youth Court office must:

1. Work with Judicial Branch accounting officials to establish appropriate accounts;
2. Issue receipts for any payments received;
3. Post a notice in the collection area noting that a receipt must be issued for any payment; and,
4. Comply with all other appropriate bookkeeping standards as established by the Court Administrator's Office.

### 3.1 Restitution

Restitution collected to provide compensation to victims is the highest priority in collections from juveniles. Restitution is subject to an administrative fee equal to the greater of five (5) dollars or 10 percent of the assessed amount. The process for restitution is:

- a. Restitution will be collected as set forth in a consent adjustment or formal court order.
- b. When the juvenile makes a restitution payment, he/she will receive a receipt from the Youth Court Office. The payment must be deposited in a state account established through the Court Administrator's Office.
- c. The Youth Court Office will maintain a spreadsheet of restitution ordered to each victim. The information may also be maintained on the CAPS system. Checks to victims will be paid at least once a month on a set basis.
- d. The restitution account must comply with state accounting practices including the requirement that two signatures are required on each check before a payment can be issued.
- e. Deposits into the account must be made each day when the accumulated cash exceeds \$100 or total collection (cash, check and money orders combined) exceeds \$500. The deposit must be made at least weekly even if it is under \$500.
- f. The administrative fee must be deposited into the restitution account. On a quarterly basis the administrative fee will be transferred to the Court Administrator's Office for deposit into the state special revenue fund to be spent in support of restitution activities in the Youth Court Offices.

### 3.2 Fee for Service

Fees for specific services provided by the Youth Court must be charged unless waived by the Youth Court probation officer or the judge for good cause. The following fees are applicable for juveniles and/or parents:

- a. Drug testing must be charged pursuant to Montana Judicial Branch policy #, Youth Drug Testing.
- b. Community Service fees must be charged when the state Judicial Branch is paying the cost of the workers' compensation insurance covering the juvenile. The fee will be based upon the cost of the workers' compensation insurance and will be established by the Court Administrator's Office. The fee will be deposited into a state special revenue account to offset workers' compensation costs.
- c. The Youth Court may also set and assess a community service fee when a contractor oversees community service activities. The fee will be deposited in a state account and used to reimburse the contractor providing the service.
- d. When the Youth Court is providing community service oversight for a court of limited jurisdiction, the fee assessed to the youth ordered to the program by the court of limited jurisdiction must cover the cost of the community service program.

- e. Youth Courts cannot waive a community service requirement in exchange for cash payments or fees.
- f. Youth Courts that offer other services such as courses for various offenses may charge a fee for these courses. The fee will be deposited into a state special revenue account and will be used to pay for services within the Youth Court.

### **3.3 Supervision Fees**

Youth Courts may establish and assess standard fees for supervision. The supervising judge(s) must approve the fees. The fees must meet the following requirements:

- a. Supervision fees must be included in the consent adjustment or court order and must be applied to all juveniles unless the judge waives the fee.
- b. Supervision fees must be collected and administered in compliance with all state accounting practices.
- c. Supervision fees must be deposited into a state special revenue account and used to offset costs within that Youth Court office.

### **3.4 Fines**

When a judge orders a fine, the fine must be collected and administered in compliance with all state accounting practices. Fines must be deposited into a state special revenue account and used to fund programs within the Youth Court.

## **4.0 Authorities**

41-5, et al MCA

## **5.0 Closing**

5.1 Level of Training Required: (A) Judges, youth court staff and court administrators involved in the setting and collection of fines and fees in the youth court.

5.2 Questions concerning this policy should be directed to the Court Administrator's Office, Montana Supreme Court.



# MONTANA DEPARTMENT OF ADMINISTRATION

Local Government Services Bureau-Systems Program

301 South Park Avenue Room 340

PO Box 200547

Helena, MT 59620-0547

June 10, 2004

Phone: (406) 841-2909

FAX: (406) 841-2910

TDD: (406) 444-1421

TO: County Treasurers  
FROM: Norman L. Klein  
RE: County Treasurer's Collection Manual

Enclosed is the current update to the County Treasurer's Collection Manual. The manual has been updated to include changes made in the 2001 and 2003 Legislative Sessions and has been completely reissued. Please replace all of the pages in your manual with the enclosed pages.

We apologize for the delay in the issuance of this update. Limitations in staff resources and other more pressing priorities have not allowed us to update the manual in the manner contemplated by Section 7-6-2141, MCA. We trust, however, that the manual will still serve as a ready reference for you in the collection and remittance of State revenues.

If you have any question or comments regarding this manual, please feel free to contact us at (406) 841-2909 in Helena.



**STATE OF MONTANA  
COUNTY TREASURERS' COLLECTIONS MANUAL**

CCM147

Page 1 of 3

COUNTY COLLECTION REPORT TO DEPARTMENT OF REVENUE  
LINE ITEM NUMBER: 147

COUNTY FUND CODE NUMBER: 7699-2

Revised: 6/2004

**LINE 147: VICTIM AND WITNESS ADVOCATE PROGRAM**

**BARS FUND NUMBER:**

7699-2 Other Miscellaneous Collections – Victim and Witness  
Advocate Program

**DESCRIPTION:**

Courts must impose an additional charge of \$25 upon conviction for certain misdemeanor or felony charges. \$1 of the charge must be retained to defray costs of the collecting court and \$24 used for local victim and witness advocate programs. If the county has no such program, \$24 of the surcharge must be sent to the state.

**INSTRUCTIONS FOR REMITTANCE TO THE STATE:**

If the county does not have a local victim and witness advocate program, \$24 of the collection of this surcharge collected by the district or justice courts shall be sent by the county treasurer to the department of revenue. The department of revenue shall deposit it in the state general fund for the crime victims compensation and assistance program in the department of justice.

**INSTRUCTIONS FOR SHARE OF COLLECTIONS RETAINED BY COUNTY:**

The county treasurer shall deposit \$1 in the general fund if the collecting court is a justice court or in the district court fund if the collecting court is a district court for the mitigation of administrative costs incurred by the court in collection of the charge.

The county treasurer may retain \$24 of the charge for payment of expenses of a local victim and witness advocate program including a program operated by a private, nonprofit organization.

**APPLICABLE STATUTES:**

46-18-236. Imposition of charge upon conviction or forfeiture – administration.

(1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) \$15 for each misdemeanor charge;



**STATE OF MONTANA**  
**COUNTY TREASURERS' COLLECTIONS MANUAL**

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COUNTY COLLECTION REPORT TO DEPARTMENT OF REVENUE  
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COUNTY FUND CODE NUMBER: 7699-2

Revised: 6/2004

**APPLICABLE STATUTES - cont.:**

**46-18-236. Imposition of charge upon conviction or forfeiture - administration-cont.**

- (b) the greater of \$20 or 10% of the fine levied for each felony charge; and
  - (c) an additional \$25 for each misdemeanor and felony charge under Title 45, 61-8-401, or 61-8-406....
- (5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer.... If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government....
- (7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.
- (b) The appropriate county, city, or town finance officer or treasurer shall deposit \$1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.
- (c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund to be used to provide services to crime victims as provided in Title 53, chapter 9, part 1.



STATE OF MONTANA  
COUNTY TREASURERS' COLLECTIONS MANUAL

CCM147

Page 3 of 3

COUNTY COLLECTION REPORT TO DEPARTMENT OF REVENUE  
LINE ITEM NUMBER: 147

COUNTY FUND CODE NUMBER: 7699-2

Revised: 6/2004

APPLICABLE STATUTES - cont.:

**46-18-251. Allocation of fines, costs, restitution, and other charges.**

- (1) Except as provided in 46-18-236(7)(b), if an offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same criminal proceeding, money collected from the offender must be allocated as provided in this section.
- (2) Except as otherwise provided in 46-18-236(7)(b) and this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, **50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:**
  - (a) payment of charges imposed pursuant to 46-18-236;
  - (b) payment of supervisory fees imposed pursuant to 46-23-1031;
  - (c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;
  - (d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and
  - (e) any other payments ordered by the court.
- (3) The money applied under subsection (2) to the payment of restitution must be paid in the following order:
  - (a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;
  - (b) to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;
  - (c) to any other government agency that has compensated the victim for the victim's pecuniary loss; and
  - (d) to any insurance company that has compensated the victim for the victim's pecuniary loss.
- (4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution.

The Supreme Court of Montana  
Office of the Court Administrator

Attachment C

JUSTICE BUILDING – ROOM 315  
215 N SANDERS  
PO BOX 203002  
HELENA, MT 59620-3002  
TELEPHONE (406) 444-2621  
Fax (406) 444-0834



JIM OPPEDAHL  
Court Administrator

September 22, 2004

Ms. Julie Ash, Court Reporter  
8<sup>th</sup> Judicial District  
415 2<sup>nd</sup> Avenue North  
Great Falls, MT 59401

Ms. Nancy Morton, Clerk of District Court  
8<sup>th</sup> Judicial District  
415 2<sup>nd</sup> Avenue North  
Great Falls, MT 59401

Dear Ms. Ash and Ms. Morton,

The purpose of this letter is to inform you of a change in process regarding the deposit of court reporter transcript fees earned by Julie Ash. Ms. Ash elected to not retain her transcription fees under 3-5-601(2)(a), MCA, and currently she sends her fees to this office and we record the revenue on the state accounting system (SABHRS). We adopted this process in an effort to simplify getting the fees deposited into the state general fund. However, 3-5-604(2), MCA states:

*(2) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (1) must be paid to the clerk of district court who shall forward the amount to the department of revenue for deposit in the state general fund.*

By collecting these fees directly from Ms. Ash we are not complying with 3-5-604(2). Our legislative audit contains a recommendation that we comply with this statute. Therefore, effective immediately this office will no longer accept receipt of transcription fees from Ms. Ash. The transcription fees must be paid to the Clerk of District Court and forwarded to the Department of Revenue.

I am copying Larry Finch, Administrator of Department of Revenue Tax Policy and Research Division along with our Court Administrator so they are both aware of this change in process. If you have questions, please call me at 444-2698.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Smith".

Lisa Smith  
Budget and Finance Director

C: Larry Finch  
Jim Oppedahl ✓

## Montana Code Annotated 2003

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**3-5-601. Court reporters -- appointment -- oath -- employment status.** (1) The judge of a district court may appoint a reporter for the court who is an officer of the court. The court reporter shall take the constitutional oath of office and file it with the clerk of court. In districts where there are two or more judges, each judge may appoint a reporter. The judge shall direct the performance of the court reporter's duties.

(2) Court reporter services may be provided by a court reporter appointed:

- (a) as a state employee foregoing transcription fees;
- (b) as a state employee retaining transcription fees; or
- (c) as an independent contractor.

(3) A court reporter appointed under subsection (2)(a) or (2)(b) is subject to classification and compensation as determined by the judicial branch personnel plan adopted under [3-1-130](#) and must receive state employee benefits and expenses as provided in Title 2, chapter 18.

(4) (a) If a court reporter is appointed under subsection (2)(a), the state shall provide all equipment and supplies for the reporter's use. Any transcription fees paid for the reporter's transcription services must be forwarded to the department of revenue for deposit in the state general fund.

(b) If a court reporter is appointed under subsection (2)(b), the state shall provide equipment and supplies for the reporter's use, except that the reporter shall provide and maintain all equipment and supplies for performance of transcription duties unless equipment is shared as provided in subsection (5). A reporter may not receive overtime for time spent on preparation of transcripts for which the reporter retains fees. The reporter shall retain all transcription fees paid for the reporter's transcription services.

(c) A court reporter appointed under subsection (2)(c) shall contract with the judicial branch as an independent contractor. The reporter shall provide and maintain the reporter's necessary equipment and supplies, retain all transcription fees paid for the reporter's transcript preparation services, and maintain professional liability insurance and workers' compensation coverage unless an exemption from workers' compensation coverage has been obtained pursuant to [39-71-401](#).

(5) A court reporter may use state-owned equipment under policies adopted by the district court council under [3-1-1602](#) to avoid duplication of equipment costs. Use of shared equipment under this subsection is not a violation of [2-2-121\(2\)\(a\)](#).

**History:** Earlier acts were Secs. 1-3, pp. 393, 394, L. 1877; re-en. Secs. 1176-1178, 5th Div. Rev. Stat. 1879; amd. Secs. 1977-1981, 5th Div. Comp. Stat. 1887. This section en. Sec. 370, C. Civ. Proc. 1895; re-en. Sec. 6373, Rev. C. 1907; re-en. Sec. 8928, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 269; re-en. Sec. 8928, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1961; R.C.M. 1947, 93-1901; amd. Sec. 47, Ch. 257, L. 2001; amd. Sec. 14, Ch. 585, L. 2001; amd. Sec. 3, Ch. 152, L. 2003.

*Provided by Montana Legislative Services*

# Montana Code Annotated 2003

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**3-5-604. Court reporters -- transcript of proceedings -- costs.** (1) Each court reporter shall furnish, upon request, with all reasonable diligence, to a party or a party's attorney in a case in which the court reporter has attended the trial or hearing a transcript from stenographic notes of the testimony and proceedings of the trial or hearing or a part of a trial or hearing upon payment by the person requiring the transcript of \$2 a page for the original transcript, 50 cents a page for the first copy, and 25 cents a page for each additional copy.

(2) If the court reporter is not entitled to retain transcription fees under [3-5-601](#), the transcription fees required by subsection (1) must be paid to the clerk of district court who shall forward the amount to the department of revenue for deposit in the state general fund.

(3) (a) If the judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the state as provided in [3-5-901](#).

(b) If the county attorney or the attorney general requires a transcript in a criminal case, the reporter shall furnish the transcript and only the reporter's actual cost of preparation may be paid by the county or the office of the attorney general.

(4) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge. In civil cases, all transcripts required by the county must be furnished, and only the reporter's actual costs of preparation may be paid by the county.

(5) If it appears to the judge that a defendant in a criminal case or a parent or guardian in a proceeding brought pursuant to Title 41, chapter 3, part 4 or 6, is unable to pay for a transcript, it must be furnished to the party and paid for by the state as provided in [3-5-901](#).

**History:** En. Sec. 373, C. Civ. Proc. 1895; re-en. Sec. 6376, Rev. C. 1907; re-en. Sec. 8931, R.C.M. 1921; re-en. Sec. 8931, R.C.M. 1935; amd. Sec. 4, Ch. 22, L. 1961; amd. Sec. 1, Ch. 163, L. 1963; amd. Sec. 44, Ch. 344, L. 1977; R.C.M. 1947, 93-1904; amd. Sec. 1, Ch. 295, L. 1981; amd. Sec. 3, Ch. 156, L. 1983; amd. Sec. 5, Ch. 680, L. 1985; amd. Sec. 7, Ch. 1, Sp. L. 1985; amd. Sec. 2, Ch. 704, L. 1991; amd. Sec. 1, Ch. 394, L. 1999; amd. Sec. 47, Ch. 257, L. 2001; amd. Sec. 16, Ch. 585, L. 2001; amd. Sec. 2, Ch. 583, L. 2003.

*Provided by Montana Legislative Services*

**Oppedahl, Jim**

**From:** Oppedahl, Jim  
**Sent:** Friday, October 22, 2004 2:40 PM  
**To:** Blair Jones (E-mail); C. B. McNeil (E-mail); David Cybulski (E-mail); Deborah K. Christopher (E-mail); Dirk Sandefur (E-mail); E. Wayne Phillips (E-mail); G. Todd Baugh (E-mail); Gary L. Day (E-mail); Gregory R. Todd (E-mail); Harkin, Douglas; Henson, John; Honzel, Thomas; Ingrid Gustafson; Jeffrey H. Langton (call) (E-mail); Jim Haynes (E-mail); Joe L. Hegel (E-mail); John C. McKeon (E-mail); John Whelan (E-mail); Julie Macek (E-mail); Katherine Irigoin (E-mail); Katherine R. Curtis (E-mail); Kenneth R. Neill (E-mail); Kurt D. Krueger (E-mail); Larson, John (Court); Loren Tucker (E-mail); Marc G. Buyske (E-mail); McCarter, Dorothy; McLean, Edward; Michael C. Prezeau (E-mail); Mike Salvagni (E-mail); Randal I Spaulding (E-mail); Rice, David; Richard A. Simonton (E-mail); Russell C. Fagg (E-mail); Sherlock, Jeffrey; Stewart E. Stadler (E-mail); Susan P. Watters (E-mail); Ted L. Mizner (E-mail); Ted O. Lympus (E-mail); Thomas McKittrick (E-mail); Visser, Shirley; William Nels Swandal (E-mail)  
**Cc:** Gray, Karla; Proue, Lindy; Meidinger, Cathy  
**Subject:** Travel Claims Under the Provisions of 3-5-215 and 3-5-216, MCA

At the Montana Judges' Association meeting in September, as part of my Court Administrator's Report, I gave District Court Judges an update on a Legislative Audit finding and recommendation related to District Court Judge travel claims that are submitted under the provisions of section 3-5-215, MCA.

This statute applies to travel expense reimbursements when a judge is not in his or her county of residence. As you will recall, when a judge avails herself or himself of the provisions of this section, 3-5-216, MCA sets a three day timeframe for submission of a travel claim. The most recent Legislative Audit found several instances in the past two year period where claims that fall under the provisions of 3-5-215 were not filed within the deadlines mandated by statute. Section 3-5-216 states:

**"3-5-216. Itemized statements -- verification -- filing.** (1) On the first of each month or within 3 days thereafter, such district judge who may desire to avail himself of the provisions of 3-5-215 shall make out an itemized claim against the state of Montana showing with dates and particulars his actual and necessary travel expenses for the preceding month.  
 (2) He shall verify such claim by certifying that the items of the claim are true and correct and are wholly unpaid and that the expenditures therein enumerated were made in the discharge of official business while away from home.  
 (3) He shall then file such claim with the state to be processed as provided by law."

Since this is a different deadline than you have for other travel claims (although we always like to get them as soon as possible) we have developed a **separate travel expense claim voucher form for claims that come under the requirements of section 3-5-216.** (Attached) Please use this claim form when you are seeking reimbursement under section 3-5-215, MCA for out of county travel expenses.

Once your have completed the form you may:

- 1) mail this completed claim form and the appropriate documentation to the Office of the Court Administrator postmarked within the three day deadline, or;
- 2) FAX the claim form and documentation within the deadline and then send the original claim form and documentation in the mail to the Office of the Court Administrator in a timely manner.

I suppose I could apologize for this inconvenience -- but since my fingerprints are no way close to the original legislation that mandates this -- I'll just say: "Please don't shoot the messenger"!

Here is the Form that **must be used for claims under the Section 3-5-215:**



Travel Expense  
Voucher -- Sect...

Thank you for your assistance in complying with the Legislative Audit findings and with Montana statutory requirements.

Jim O.

Jim Oppedahl, Court Administrator  
Montana Supreme Court  
Office of the Court Administrator  
301 South Park Avenue, Room 328  
P.O. Box 203005  
Helena, Montana 59620-3005  
Phone: (406) 841-2957  
FAX: (406) 841-2955  
E-mail: [joppedahl@state.mt.us](mailto:joppedahl@state.mt.us)

**Travel Expense Voucher**

3-5-216, MCA requires these claims be submitted on the first of each month or within three days thereafter.

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_  
 State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Judicial District: \_\_\_\_\_  
 Organization Center: \_\_\_\_\_  
 Social Security Number: \_\_\_\_\_

Briefly explain nature of trip(s): \_\_\_\_\_

Day	1		2		3	4	5	6	7		8	9
	Departure Time	AM PM	Arrival Time	AM PM					Travel Details	Mode of Travel		
									Lodging	Meals		
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
13												
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21												
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23												
24												
25												
26												
27												
28												
29												
30												
31												

For Agency Use Only	10	Column Totals				
	11	Less Travel Advance Received				
	12	Net Reimbursement Due Me				
	13	Net Payment Due State				

Miscellaneous Expenses: \_\_\_\_\_

*I hereby certify this is a valid travel claim to the State in accordance with statutes and administrative procedures.*

Judge's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

IN THE SUPREME COURT OF THE STATE OF MONTANA

FILED

SEP 30 2004

IN THE MATTER OF THE ADOPTION )  
OF THE MONTANA BOARD OF )  
BAR EXAMINERS' RULES AND BAR )  
EXAMINATION-RELATED FEES )

Ed Smith  
ORDINARY CLERK OF THE SUPREME COURT  
Nunc Pro Tunc STATE OF MONTANA

On January 30, 2003, this Court entered its order on proposed Bar Examiners' Rules and bar examination-related fees. Among other things, that order stated that, pursuant to § 37-61-103, MCA, the Board of Bar Examiners and graders of the examination would be compensated at certain rates, plus expenses. The Order defined expenses as referring to the prevailing State Bar reimbursement policy. They include highway mileage at the prevailing State Bar rate or coach airfare, actual lodging expenses, when necessary, and a maximum of \$30 per day for meals.

The quoted portion of the order is not consistent with state law governing the payment of expenses and was erroneously--and inadvertently--entered.

THEREFORE,

IT IS ORDERED that the quoted language is null and void as of the date of this Order; and

IT IS ORDERED that, effective this date, travel-related expenses for Board of Bar Examiners and graders shall be paid at state rates.

The Clerk is directed to mail a true copy of this Order to Court Administrator Jim Oppedahl and to the Bar Admissions Administrator of the State Bar of Montana.

DATED this 28th day of September, 2004.

For the Court,

By Karla M. Gray  
Chief Justice



